

§ 10.1

Subpart A—Rules Governing Authority to Practice

SOURCE: T.D. 9011, 67 FR 48765, July 26, 2002, unless otherwise noted.

§ 10.1 Offices.

(a) *Establishment of office(s)*. The Commissioner shall establish the Office of Professional Responsibility and any other office(s) within the Internal Revenue Service necessary to administer and enforce this part. The Commissioner shall appoint the Director of the Office of Professional Responsibility and any other Internal Revenue official(s) to manage and direct any office(s) established to administer or enforce this part. Offices established under this part include, but are not limited to:

(1) The Office of Professional Responsibility, which shall generally have responsibility for matters related to practitioner conduct and shall have exclusive responsibility for discipline, including disciplinary proceedings and sanctions; and

(2) An office with responsibility for matters related to authority to practice before the Internal Revenue Service, including acting on applications for enrollment to practice before the Internal Revenue Service and administering competency testing and continuing education.

(b) Officers and employees within any office established under this part may perform acts necessary or appropriate to carry out the responsibilities of their office(s) under this part or as otherwise prescribed by the Commissioner.

(c) *Acting*. The Commissioner will designate an officer or employee of the Internal Revenue Service to perform the duties of an individual appointed under paragraph (a) of this section in the absence of that officer or employee or during a vacancy in that office.

(d) *Effective/applicability date*. This section is applicable beginning August 2, 2011, except that paragraph (a)(1) is applicable beginning June 12, 2014.

[T.D. 9527, 76 FR 32300, June 3, 2011, as amended by T.D. 9668, 79 FR 33692, June 12, 2014]

31 CFR Subtitle A (7–1–14 Edition)

§ 10.2 Definitions.

(a) As used in this part, except where the text provides otherwise—

(1) *Attorney* means any person who is a member in good standing of the bar of the highest court of any state, territory, or possession of the United States, including a Commonwealth, or the District of Columbia.

(2) *Certified public accountant* means any person who is duly qualified to practice as a certified public accountant in any state, territory, or possession of the United States, including a Commonwealth, or the District of Columbia.

(3) *Commissioner* refers to the Commissioner of Internal Revenue.

(4) *Practice before the Internal Revenue Service* comprehends all matters connected with a presentation to the Internal Revenue Service or any of its officers or employees relating to a taxpayer's rights, privileges, or liabilities under laws or regulations administered by the Internal Revenue Service. Such presentations include, but are not limited to, preparing documents; filing documents; corresponding and communicating with the Internal Revenue Service; rendering written advice with respect to any entity, transaction, plan or arrangement, or other plan or arrangement having a potential for tax avoidance or evasion; and representing a client at conferences, hearings, and meetings.

(5) *Practitioner* means any individual described in paragraphs (a), (b), (c), (d), (e), or (f) of § 10.3.

(6) A *tax return* includes an amended tax return and a claim for refund.

(7) *Service* means the Internal Revenue Service.

(8) *Tax return preparer* means any individual within the meaning of section 7701(a)(36) and 26 CFR 301.7701–15.

(b) *Effective/applicability date*. This section is applicable beginning August 2, 2011.

[T.D. 9359, 72 FR 54544, Sept. 26, 2007, as amended by T.D. 9527, 76 FR 32300, June 3, 2011]

§ 10.3 Who may practice.

(a) *Attorneys*. Any attorney who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice

before the Internal Revenue Service by filing with the Internal Revenue Service a written declaration that the attorney is currently qualified as an attorney and is authorized to represent the party or parties. Notwithstanding the preceding sentence, attorneys who are not currently under suspension or disbarment from practice before the Internal Revenue Service are not required to file a written declaration with the IRS before rendering written advice covered under § 10.37, but their rendering of this advice is practice before the Internal Revenue Service.

(b) *Certified public accountants.* Any certified public accountant who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Internal Revenue Service by filing with the Internal Revenue Service a written declaration that the certified public accountant is currently qualified as a certified public accountant and is authorized to represent the party or parties. Notwithstanding the preceding sentence, certified public accountants who are not currently under suspension or disbarment from practice before the Internal Revenue Service are not required to file a written declaration with the IRS before rendering written advice covered under § 10.37, but their rendering of this advice is practice before the Internal Revenue Service.

(c) *Enrolled agents.* Any individual enrolled as an agent pursuant to this part who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Internal Revenue Service.

(d) *Enrolled actuaries.* (1) Any individual who is enrolled as an actuary by the Joint Board for the Enrollment of Actuaries pursuant to 29 U.S.C. 1242 who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Internal Revenue Service by filing with the Internal Revenue Service a written declaration stating that he or she is currently qualified as an enrolled actuary and is authorized to represent the party or parties on whose behalf he or she acts.

(2) Practice as an enrolled actuary is limited to representation with respect

to issues involving the following statutory provisions in title 26 of the United States Code: sections 401 (relating to qualification of employee plans), 403(a) (relating to whether an annuity plan meets the requirements of section 404(a)(2)), 404 (relating to deductibility of employer contributions), 405 (relating to qualification of bond purchase plans), 412 (relating to funding requirements for certain employee plans), 413 (relating to application of qualification requirements to collectively bargained plans and to plans maintained by more than one employer), 414 (relating to definitions and special rules with respect to the employee plan area), 419 (relating to treatment of funded welfare benefits), 419A (relating to qualified asset accounts), 420 (relating to transfers of excess pension assets to retiree health accounts), 4971 (relating to excise taxes payable as a result of an accumulated funding deficiency under section 412), 4972 (relating to tax on nondeductible contributions to qualified employer plans), 4976 (relating to taxes with respect to funded welfare benefit plans), 4980 (relating to tax on reversion of qualified plan assets to employer), 6057 (relating to annual registration of plans), 6058 (relating to information required in connection with certain plans of deferred compensation), 6059 (relating to periodic report of actuary), 6652(e) (relating to the failure to file annual registration and other notifications by pension plan), 6652(f) (relating to the failure to file information required in connection with certain plans of deferred compensation), 6692 (relating to the failure to file actuarial report), 7805(b) (relating to the extent to which an Internal Revenue Service ruling or determination letter coming under the statutory provisions listed here will be applied without retroactive effect); and 29 U.S.C. 1083 (relating to the waiver of funding for nonqualified plans).

(3) An individual who practices before the Internal Revenue Service pursuant to paragraph (d)(1) of this section is subject to the provisions of this part in the same manner as attorneys, certified public accountants, enrolled agents, enrolled retirement plan agents, and registered tax return preparers.

§ 10.3

31 CFR Subtitle A (7-1-14 Edition)

(e) *Enrolled Retirement Plan Agents—*

(1) Any individual enrolled as a retirement plan agent pursuant to this part who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Internal Revenue Service.

(2) Practice as an enrolled retirement plan agent is limited to representation with respect to issues involving the following programs: Employee Plans Determination Letter program; Employee Plans Compliance Resolution System; and Employee Plans Master and Prototype and Volume Submitter program. In addition, enrolled retirement plan agents are generally permitted to represent taxpayers with respect to IRS forms under the 5300 and 5500 series which are filed by retirement plans and plan sponsors, but not with respect to actuarial forms or schedules.

(3) An individual who practices before the Internal Revenue Service pursuant to paragraph (e)(1) of this section is subject to the provisions of this part in the same manner as attorneys, certified public accountants, enrolled agents, enrolled actuaries, and registered tax return preparers.

(f) *Registered tax return preparers.* (1) Any individual who is designated as a registered tax return preparer pursuant to §10.4(c) of this part who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Internal Revenue Service.

(2) Practice as a registered tax return preparer is limited to preparing and signing tax returns and claims for refund, and other documents for submission to the Internal Revenue Service. A registered tax return preparer may prepare all or substantially all of a tax return or claim for refund of tax. The Internal Revenue Service will prescribe by forms, instructions, or other appropriate guidance the tax returns and claims for refund that a registered tax return preparer may prepare and sign.

(3) A registered tax return preparer may represent taxpayers before revenue agents, customer service representatives, or similar officers and employees of the Internal Revenue Service (including the Taxpayer Advocate Service) during an examination if the registered tax return preparer

signed the tax return or claim for refund for the taxable year or period under examination. Unless otherwise prescribed by regulation or notice, this right does not permit such individual to represent the taxpayer, regardless of the circumstances requiring representation, before appeals officers, revenue officers, Counsel or similar officers or employees of the Internal Revenue Service or the Treasury Department. A registered tax return preparer's authorization to practice under this part also does not include the authority to provide tax advice to a client or another person except as necessary to prepare a tax return, claim for refund, or other document intended to be submitted to the Internal Revenue Service.

(4) An individual who practices before the Internal Revenue Service pursuant to paragraph (f)(1) of this section is subject to the provisions of this part in the same manner as attorneys, certified public accountants, enrolled agents, enrolled retirement plan agents, and enrolled actuaries.

(g) *Others.* Any individual qualifying under §10.5(e) or §10.7 is eligible to practice before the Internal Revenue Service to the extent provided in those sections.

(h) *Government officers and employees, and others.* An individual, who is an officer or employee of the executive, legislative, or judicial branch of the United States Government; an officer or employee of the District of Columbia; a Member of Congress; or a Resident Commissioner may not practice before the Internal Revenue Service if such practice violates 18 U.S.C. 203 or 205.

(i) *State officers and employees.* No officer or employee of any State, or subdivision of any State, whose duties require him or her to pass upon, investigate, or deal with tax matters for such State or subdivision, may practice before the Internal Revenue Service, if such employment may disclose facts or information applicable to Federal tax matters.

(j) *Effective/applicability date.* Paragraphs (a), (b), and (g) of this section are applicable beginning June 12, 2014. Paragraphs (c) through (f), (h), and (i)

Office of the Secretary of the Treasury

§ 10.4

of this section are applicable beginning August 2, 2011.

[T.D. 9011, 67FR 48765, July 26, 2002, as amended by T.D. 9359, 72 FR 54545, Sept. 26, 2007; T.D. 9527, 76 FR 32300, June 3, 2011; T.D. 9668, 79 FR 33693, June 12, 2014]

§ 10.4 Eligibility to become an enrolled agent, enrolled retirement plan agent, or registered tax return preparer.

(a) *Enrollment as an enrolled agent upon examination.* The Commissioner, or delegate, will grant enrollment as an enrolled agent to an applicant eighteen years of age or older who demonstrates special competence in tax matters by written examination administered by, or administered under the oversight of, the Internal Revenue Service, who possesses a current or otherwise valid preparer tax identification number or other prescribed identifying number, and who has not engaged in any conduct that would justify the suspension or disbarment of any practitioner under the provisions of this part.

(b) *Enrollment as a retirement plan agent upon examination.* The Commissioner, or delegate, will grant enrollment as an enrolled retirement plan agent to an applicant eighteen years of age or older who demonstrates special competence in qualified retirement plan matters by written examination administered by, or administered under the oversight of, the Internal Revenue Service, who possesses a current or otherwise valid preparer tax identification number or other prescribed identifying number, and who has not engaged in any conduct that would justify the suspension or disbarment of any practitioner under the provisions of this part.

(c) *Designation as a registered tax return preparer.* The Commissioner, or delegate, may designate an individual eighteen years of age or older as a registered tax return preparer provided an applicant demonstrates competence in Federal tax return preparation matters by written examination administered by, or administered under the oversight of, the Internal Revenue Service, or otherwise meets the requisite standards prescribed by the Internal Revenue Service, possesses a current or

otherwise valid preparer tax identification number or other prescribed identifying number, and has not engaged in any conduct that would justify the suspension or disbarment of any practitioner under the provisions of this part.

(d) *Enrollment of former Internal Revenue Service employees.* The Commissioner, or delegate, may grant enrollment as an enrolled agent or enrolled retirement plan agent to an applicant who, by virtue of past service and technical experience in the Internal Revenue Service, has qualified for such enrollment and who has not engaged in any conduct that would justify the suspension or disbarment of any practitioner under the provisions of this part, under the following circumstances:

(1) The former employee applies for enrollment on an Internal Revenue Service form and supplies the information requested on the form and such other information regarding the experience and training of the applicant as may be relevant.

(2) The appropriate office of the Internal Revenue Service provides a detailed report of the nature and rating of the applicant's work while employed by the Internal Revenue Service and a recommendation whether such employment qualifies the applicant technically or otherwise for the desired authorization.

(3) Enrollment as an enrolled agent based on an applicant's former employment with the Internal Revenue Service may be of unlimited scope or it may be limited to permit the presentation of matters only of the particular specialty or only before the particular unit or division of the Internal Revenue Service for which the applicant's former employment has qualified the applicant. Enrollment as an enrolled retirement plan agent based on an applicant's former employment with the Internal Revenue Service will be limited to permit the presentation of matters only with respect to qualified retirement plan matters.

(4) Application for enrollment as an enrolled agent or enrolled retirement plan agent based on an applicant's former employment with the Internal Revenue Service must be made within